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contract, and because of that fact the plaintiff is injured. Whatever damages have been suffered flow from this breach of contract—this exercise of a legal right. If there had been no breach there would have been no damages. It is but a roundabout way of reaching the same conclusion. When it is considered that the policy of the law, for the protection of the infant, forbids a recovery either on the ground of contract or estoppel, it seems somewhat anomalous that that same policy of protection should allow an action in *ex delicto*, when a judgment in that form is followed by so much more serious consequences.—*National Corporation Reporter*.

This subject is discussed at length in an extensive note to *Craig v. Van Bebb* (Mo.), in 18 Am. St. Rep., at pp. 633, 720–724. This note contains the most learned and elaborate treatise on Infants' Contracts that we know of anywhere in the whole bibliography of the law. It covers more than 150 pages, and seems to be exhaustive, whether from the standpoint of principle or authority.

See further on the subject of misrepresentation of age: Cooley on Torts, 110; Schouler on Dom. Rel. 568; Benjamin on Sales, 22; note to *Humphrey v. Douglas*, (Vt.), 33 Am. Dec. 177, 184.

FORMALITIES FOR MAKING A WILL IN ENGLAND AND IN VIRGINIA.—

1. *The English and Virginia Statutes.* (a) *In England.* By statute of 1 Victoria, ch. 26, sec. 9 (taking effect Jan. 1, 1838), it is enacted that, "No will shall be valid unless it shall be in writing, and executed in the manner hereafter mentioned; that is to say, it shall be signed at the foot or end thereof by the testator, or some other person in his presence and by his direction, and such signature shall be made or acknowledged by the testator in the presence of two or more witnesses present at the same time; and such witnesses shall attest, and shall subscribe the will in the presence of the testator; but no form of attestation shall be necessary." See 3 Jarman on Wills, Appendix, 721–805, for the whole Wills Act of 1837. This statute is substantially followed in many of our States. By it the same formalities of execution are required of wills of both realty and personalty, and all wills (olograph or not olograph) are required to be attested by at least two witnesses. The English Statute of Frauds required three witnesses; but this applied to wills of *land* only. It has been followed in this respect in a number of American States (Georgia and Maryland for example), which require three witnesses to a devise.

(b) *In Virginia.* By Code of Virginia, sec. 2514: "No will shall be valid unless it be in writing, and signed by the testator or by some other person in his presence and by his direction, in such manner as to make it manifest that the name was intended as a signature; and moreover, unless it be wholly written [olograph] by the testator, the signature shall be made or the will acknowledged by him in the presence of at least two competent witnesses, present at the same time; and such witnesses shall subscribe the will in the presence of the testator, but no form of attestation shall be necessary." The statute took effect July 1, 1850 (Code of 1849, ch. 122, sec. 4), and is based on the Wills Act of 1 Victoria. But observe these differences between England and Virginia:

As to signature. The English statute requires a will to be signed "at the foot or end thereof," but the Virginia statute says, "signed in such manner as to

make it manifest that the name was intended as a signature." As to the effect of these words, see hereafter.

As to witnesses. The English statute requires *all* wills to be attested by two witnesses; the Virginia statute requires no witnesses when the will is "wholly written by the testator," *i. e.*, in the case of an olograph will.

(2) *What is a sufficient signing by the testator?*

(a) In England. "At the foot or end thereof." For meaning of these words, see statute of 15 and 16 Vict., ch. 24, explaining 1 Vict., ch. 26; *Wms. Real Property*, 205.

(b) Virginia. "In such manner as to make it manifest that the name was intended as a signature." Code Va., sec. 2514. See these words explained in *Ramsey v. Ramsey*, 13 Gratt. 664; *Roy v. Roy*, 16 Gratt. 418; and especially in *Warwick v. Warwick*, 86 Va. 596. The doctrine established in Virginia is that unless it appears *affirmatively* on the face of the paper that the name of the testator was intended as a signature, it is not sufficient signing under the statute; and that the testator's name at the top or beginning of the will is an *equivocal* act, and will therefore be insufficient, unless there be on the face of the will evidence to make it *manifest* that the name was regarded as a signature, and that the instrument was to be complete without further signing. So that in Virginia *not* to sign a will at the *foot* or *end* is hazardous in the extreme. In *Warwick v. Warwick*, *supra*, the will began thus: "I, Abraham Warwick, Jr., declare this to be my last will and testament." Then followed the provisions of the will, without a signature at the end. The testator placed the paper in an envelope and sealed it, and wrote on the envelope: "My will, Abraham Warwick, Jr." *Held*, that the will was not so signed as to satisfy the Virginia statute. For the signature at the top of the will was an *equivocal* act *per se*, and there was nothing on the face of the will to remove the equivocation; and as to the name on the envelope, it was not a signature at all to the will, but a mere *label* or *endorsement* of the envelope, which contained what the testator *supposed* was *already* a validly executed will.

(3) *Does an unsigned attestation clause invalidate an olograph will, signed by the testator?* This question is answered in the negative in *Perkins v. Jones*, 84 Va. 358, on the ground that an olograph will is perfect without any attestation, and so the incomplete attestation clause is simply a nullity, not affecting the validity of the already complete will.

(4) *When a will is not olograph, and must have two witnesses, in whose presence must the testator sign his name?* He must sign in the presence of the two witnesses, *both present together*. He cannot sign or acknowledge the will at different times, in the presence of one witness only at each time, but he must sign, or acknowledge, in their *joint presence*. This is *absolutely essential* to the validity of the will.

(5) *In whose presence must the witnesses sign?* They must sign in the presence of the *testator*, but need not sign in the presence of *each other*. This is the law in England and in Virginia, and is said to be the general rule. Tied. R. P., sec. 877. That subscribing witnesses need not sign *in each other's presence*, see, in Virginia, *Parramore v. Taylor*, 11 Gratt. 220; *Beane v. Yerby*, 12 Id. 239; *Green v. Crain*, 12 Id. 252. But the West Virginia Code declares that the subscribing witnesses "shall subscribe the will in the presence of the testator *and of each other*." (Code W. Va., c. 77, sec. 3); and this is no doubt the law in other States.

(6) *What is meant by "in the presence of the testator?"* For sufficient answer, see Tied. R. P., sec. 877; 2 Min. Ins. (4th ed.) 1017; *Baldwin v. Baldwin*, 81 Va. 405, citing the earlier Virginia cases.

(7) *Can the testator acknowledge in the presence of the witnesses his signature made previously, and not in their presence?* Yes, under Wills Act of 1 Victoria. In Virginia the language is, "the signature shall be made, or the will acknowledged," in the presence of the witnesses.

(8) *Can a subscribing witness acknowledge, in the testator's presence, his signature previously made out of the testator's presence?* No, in England, by 1 Victoria. See *Hindmarsh v. Charlton*, 8 H. of L. Cas. 159. Yes, in Virginia, by statute before July 1, 1850. *Sturdivant v. Birchett*, 10 Gratt. 67, two judges dissenting. *Quere*, now in Virginia, under statute taking effect July 1, 1850, whose phraseology is different from the former statute. The decision in *Sturdivant v. Birchett* has been regretted. See 2 Min. Ins. 920.

(9) *What must the subscribing witnesses attest by their signatures?*

(a) In England. That the testator has *already* signed the will in the presence of the two witnesses, both present together. Until the testator has so signed, there is *nothing to be attested*. See *Hindmarsh v. Charlton*, 8 H. of L. Cas. 159, 161, 168. Here the testator, in the forenoon, signed in the presence of one of the witnesses, a certain Fred. Wm. Nap. Wilson, who signed his name in the presence of the testator, but did not cross the "F" in "Fred." In the afternoon, the other witness, Dr. White, was present, and the testator acknowledged his signature in the presence of Wilson and White, both present together. White then signed in the presence of the testator, and Wilson added the cross to the "F" in "Fred," and wrote the day and month. *Held*, an invalid execution. For when Wilson signed his name in the forenoon, when the testator had signed in *his presence only* there was nothing to attest; and, though the testator in the afternoon acknowledged his signature in the joint presence of both witnesses, Wilson did not, *after that*, subscribe his name, an *acknowledgment* by him not being sufficient, and the crossing of the "F" not amounting to a *new* signature.

(b) In Virginia. It is held, contrary to *Hindmarsh v. Charlton*, that a witness may *subscribe* the will before it has been signed or acknowledged by the testator in the presence of *two witnesses, both present together*, if it is subsequently *acknowledged* by the testator in the *joint presence* of the two witnesses. See *Parramore v. Taylor*, 11 Gratt. 226; *Beane v. Yerby*, 12 Id. 239; *Green v. Crain*, 12 Id. 252. This Virginia doctrine is not to be commended. See in favor of the English doctrine *Chase v. Kittredge*, 87 Am. Dec. 687; 1 Redfield on Wills, 226, and note 6.

(10) *What amounts to a signature as a subscribing witness?*

The signature must be by way of attestation, not as an agent merely. See *Peake v. Jenkins*, 80 Va. 293, where the execution of the will was as follows:

"ANNA L. JENKINS,"

"By Mary F. Holladay."

April 13th, 1870.

Witness:

"LUCY P. B. LIPSCOMB."

Held, Mary F. Holladay, who had written the will for Anna L. Jenkins, and

signed Anna L. Jenkins' name, had written her own name, not as a witness, but to indicate *agency*, and so the will failed for lack of two witnesses.

(11) *Form of Attestation.* No form is *required*, but it is better to have the subscribing witnesses sign a form of attestation, reciting compliance with all the formalities. The following form is believed to be sufficient everywhere :

"Signed, sealed, published, and declared by William Brown (the testator), as and for his last will and testament, in the presence of us, all three present together, who, at his request, in his presence, and in the presence of one another, have hereunto subscribed our names as attesting witnesses." Then follow the signatures of the three attesting witnesses.

The above contains more than is necessary in Virginia. We require *two* witnesses only, and the witnesses need not subscribe in the presence of *each other*, but only in the presence of the testator. And a will, unlike a deed, does not require to be sealed. It is safer, however, to have three witnesses and to have them sign in the presence of one another; for a will of land is governed by the law of the *situs* (*lex loci rei sitæ*), and the testator might own land in another State where these formalities are required.